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Supreme Court of the United States

OCTOBER TERM, 1939

No. 251

JAMES STEWART & CO., INC.,

Appellant,

—*against*—

KATHERINE SADRAKULA, as Administratrix of the Goods, Chattels and Credits which were of NICHOLAS SADRAKULA, Deceased,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

APPELLEE'S BRIEF

LEO FIXLER,
Counsel for Appellee.

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—against—

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APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

APPELLEE'S BRIEF

Preliminary Statement.

Appellee is the widow of one, Nicholas Sadrakula, who died on October 24th, 1935 as a result of injuries sustained by him that day while employed as a rigger by the United Hoisting Co., Inc. in connection with the construction of a post office building in the City of New York.

Appellant, a corporation organized under the laws of the State of New York, as general contractor under an agreement with the Treasury Department of the United States, undertook to construct this building and the United Hoisting Co., Inc. was acting as subcontractor for the installation of certain hoisting equipment (plaintiff's Exhibit 3, R. 118, 119, 120).

The complaint (R. 5) charged appellant with negligence in failing to comply with the provisions of the New York State Labor Law*. The answer (R. 8) generally denied the allegations of the complaint and alleged the contributory negligence of the decedent as a separate defense.

At the trial appellant rested at the close of respondent's proof (R. 111). The jury was waived and all questions of fact and law were submitted to the Court (R. 114).

Throughout this litigation appellant conceded that it did not "plank over" the "bay" at which decedent was working on the day of his death but sought to escape liability by claiming that the provisions of the Labor Law were inapplicable because the property where the accident occurred was under the exclusive jurisdiction of the Federal Government (R. 99).

The learned trial Justice decided (R. 122) that "the proximate cause of the accident which occasioned decedent's death was the failure of defendant to thoroughly plank over the beams as required by Section 241, Subdivision 4, of the Labor Law".

Upon appeal, the New York Appellate Division (Second Department) unanimously affirmed, stating in part:

> "The evidence adequately established that the proximate cause of the decedent's death was defendant's failure to plank over the steel beams in the western area of the 'bay' as required by Section 241, Subdivision 4 of the Labor Law" (R. 131).

The Court of Appeals unanimously affirmed the determination of the Appellate Division without opinion (R. 133, 134).

These determinations obviate the necessity of restating the facts and appellant has wisely abandoned the errors assigned numbered 4 and 5 since they concern themselves with the

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* Appellant's Appendix, p. 23.

facts and the construction of the State Labor Law, neither question being reviewable by this Honorable Court.

Herbert v. *Louisiana*, 272 U. S. 312;
Bacon & Sons v. *Martin*, 305 U. S. 380;
Portland R. R. & L. & P. Co. v. *R. R. Comm.*, 229 U. S. 397;
Whitney v. *Peo. of State of Cal.*, 274 U. S. 357.

Appellant's application to amend the remittitur was granted and the Court of Appeals on April 21, 1939 said:

"A question under the Federal Constitution was presented and necessarily passed upon by this Court. The appellant's contention that Section 241, Subdivision 4, of the Labor Law of the State of New York * * * in so far as the said law is construed to apply to the construction and erection of a post office building pursuant to a contract with the Treasury Department of the United States, upon land within the exterior boundaries of the State of New York but which is within the exclusive jurisdiction of the United States under Article I, Section 8, Clause 17 of the Constitution of the United States, is repugnant to the Constitution and Laws of the United States in that it offends Article I, Section 8 of the Constitution of the United States and Title 40, U. S. Code, Sections 285, 341 and 342 * * * and is invalid when so applied.

This Court held that the aforesaid Labor Law of the State of New York is valid and not repugnant to any provision of the Constitution of the United States" (R. 134, 135).

If this Honorable Court decides to hear this cause, then review should be limited to the precise Federal question

raised by the appellant in the trial Court, to wit (R. 98, 99): "That Section 241 of the Labor Law of the State of New York has no application, for the reason that the place of the accident, both the building under construction and the land upon which it was being constructed, were within the exclusive jurisdiction of the United States by virtue of the United States Constitution, Article I, Section 8, Clause 17*; that under the evidence, exclusive jurisdiction over the place of the accident had been ceded to the United States more than about four years prior to accident, and that for that reason no statute regulating the construction of the building, such as the Labor Law here, would apply."

And again, at page 112, folio 336, after resting at the end of appellee's case, "I renew the motion for the direction of a verdict in favor of defendant on the specific ground that Section 241, Subdivision 4 of the Labor Law is not applicable to the place of the accident and that application thereof to the place of the accident is in violation of Article I, Section 8 of the United States Constitution."

In the transcript of the record (R. 142), in addition to the specific Federal question referred to, appellant added as an assignment of error, without authority, that the application of the Labor Law violated U. S. Code, Title 40, Sections 285, 341, 342 (assignment #3).

Since decision upon appellee's motion to dismiss this appeal has been postponed until oral argument, we respectfully refer to that question in our Point I.

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* Appellant's Brief, Appendix p. 24.

POINT I.

This Court is without jurisdiction to hear this appeal because it affirmatively appears from the record that at the time of the accident the United States had not accepted exclusive jurisdiction. There is therefore no Federal question involved.

Prior to the trial of this case, and on November 8th, 1937 (R. 16), in order to save time and expense in procuring certified copies of records filed by the United States in the office of the Secretary of the State, the parties entered into a written stipulation, dated November 1, 1937, because obviously these facts were indisputable (R. 17, 18).

Before preparing that stipulation, appellee wrote to the Secretary of the State of New York to ascertain the exact information to be incorporated in that stipulation. On October 26, 1937, a communication was received from that office in which it was stated that jurisdiction was acquired by the United States under the provision of Section 211* of the General Municipal Law and that the documents listed therein were filed thereunder with the Secretary of State on December 26, 1935.

Not only was this information checked by counsel of record for appellant, but on November 1, 1937 the stipulation (R. 17, 18) was prepared, following the exact language of Section 211 of the General Municipal Law. Why appellant now asserts that the provisions of the State Law apply rather than those of Section 211* of the General Municipal Law, we do not understand, but it is obvious that it would

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* Appellant's Brief, Appendix p. 26.

never have signed the stipulation as it exists if such assertion had any merit.

We assume that counsel in writing his brief at this late date, overlooked these facts as well as others which we propose to bring to his attention.

It is asserted that "as there is no evidence that the land herein involved is not over two acres in area, the General Municipal Law does not apply. Hence, the State Law which contains no such limitation (Section 50)* is alone applicable" (appellant's brief, p. 10). But counsel again overlooks the language of the stipulation (R. 18) which describes the land as bounded "on the North by Barclay Street, on the East by Church Street, on the South by Vesey Street and on the West by West Broadway". This stipulation was before the Supreme Court which presides in the City of New York and as part of the evidence before it, it was privileged to take judicial notice of the size of this plot and appellant would not have there asserted the frivolous argument that there is no evidence that the land comprised less than two acres.

Skelly v. *N. Y. El. R. R.*, 7 Misc. 88, aff'd, 148 N. Y. 747.

In this stipulation it appears that the United States obtained title by private purchase of the plots within this one square block area in New York County. Deeds thereto were on file in the office of the Register of that County.

State Courts must take judicial notice of matters of public record and the facts disclosed by such record are conclusive.

Casey v. *Bryce*, 55 So. 211, 173 Ala. 453.

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* Appellant's Brief, Appendix p. 26.

This rule not only covers the information as to the size of the "enclave" but also the public records and their contents in the office of the Secretary of State that filing of the "Title Papers" as expressed in the stipulation, was made pursuant to Section 211 of the General Municipal Law.

It is strange that appellant waits until this late date to give the stipulation an unwarranted interpretation.

Since these matters were questions of fact for the trial Court and subject to its judicial notice, they are likewise matters to be judicially noticed by this Court.

"A higher Court on appeal will take judicial cognizance of any matter of which the Court of original jurisdiction might take notice" 15 R. C. L. 1063, Section 6 (Citing *Pennington v. Gibson*, 16 How. 65, 14 U. S. (L. Ed.) 847).

Appellant is also in error in stating that "appellee did not question that the United States had exclusive jurisdiction" (appellant's brief, p. 8). That point was raised in a trial memorandum submitted to the trial Court and throughout subsequent proceedings appellee consistently contended that no Federal question was involved.

Appellant may contend that the records of the Secretary of State are not part of the transcript, and in this it would be technically correct but for the fact that the acts of the Treasury Department in filing documents in pursuance of law, and the contents thereof, are judicially known by the Courts of the State as well as this Court sitting as an Appellate Tribunal.

State v. *Gramelspacher*, 126 Ind. 398, 26 N. E. 81, 15 R. C. L. 1063, Section 6.

We next consider appellant's contention that jurisdiction was transferred "*proprio vigore*" by virtue of the Federal Constitution and not through the consent statutes of the State.

The United States acquired title to this property, wholly within the City of New York, by purchase at private sale in 1931, as a site for a new post office and office building.

At the time there were two distinct State acts under which exclusive jurisdiction could be transferred to the United States. State Law, Sections 52 to 55 inclusive,* and General Municipal Law, Sections 211, 212,† Under the State Law (Article 4, Consolidated Laws of New York, Chapter 57, as amended), New York State consented to such purchase under Section 50.* Exclusive jurisdiction was available to the United States under Section 52 upon:

(a) filing and recording of certified copies of the record or transfer together with maps and plans and a certificate from the United States Attorney General that title was clear; and

(b) the Governor was then authorized to execute a deed or release in duplicate ceding jurisdiction to the United States if the latter requested same.

Under Section 55, one of the deeds or releases must be delivered to the agent of the United States, the other filed and recorded in the office of the Secretary of State of New York and "said" deed or release shall become valid and effective only upon such filing and recording in said office."

Admittedly, no certificate, as provided for in the State Law, Section 55, was ever issued by the Governor and no attempt was made by the United States to otherwise comply with its provisions.

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* Appellant's Brief, Appendix p. 26.

† Appellant's Brief, Appendix p. 25.

If, as appellant contends, the State Law applied, even then only consent to the purchase was effective under Section 50, since nothing was done by the United States to obtain exclusive jurisdiction as prescribed by Sections 52 to 55 inclusive and therefore jurisdiction to the present day would remain with the State of New York. However, this absurd situation does not exist because the United States not only obtained consent under Section 210 of the General Municipal Law, but also accepted exclusive jurisdiction by complying with Section 211 on December 26, 1935 and the language of the stipulation (R. 17, 18) precludes any other conclusion.

Decedent met his death on October 24, 1935 as a result of appellant's negligence on that day in failing to comply with the State Labor Law.

Since exclusive jurisdiction contemplated by the New York State consent statutes had not vested in the United States on October 24, 1935, and in fact not until December 26, 1935, there is no Federal question involved and therefore this Court is without jurisdiction to hear this appeal.

In an endeavor to overcome this irrefutable conclusion, appellant urges as it did below, that by virtue of Article I, Section 8, Clause 17 of the Federal Constitution, exclusive jurisdiction over the place of the accident had been ceded to the United States about four years prior thereto (R. 99). This identical contention was rejected by this Honorable Court in the very recent cases of:

James v. *Dravo*, 302 U. S. 134;
Murray v. *Joe Gerrick & Co.*, 291 U. S. 315;
Silas Mason Co. v. *Tax Comm. of Wash.*, 302 U. S. 186;
Atkinson v. *State Tax*, 303 U. S. 20;
Collins v. *Yosemite Park*, 304 U. S. 518.

In the *James* case it was also urged that exclusive jurisdiction vested in the United States by virtue of Clause 17 of

the Federal Constitution and not under the consent statute of the State. Mr. Chief Justice Hughes in delivering the opinion of the Court pointed out that Clause 17 contained "no express stipulation that the consent of the State must be without reservation" and there was no reason "why the United States should be compelled to accept exclusive jurisdiction or the State be compelled to grant it in giving its consent to purchases."

In the *Silas Mason Co.* case, the appellant contended that exclusive jurisdiction as to lands purchased at private sale by the United States within the State of Washington, vested "*ipso facto*" in the Federal Government by the operation of Clause 17, Section 8, Article I of the Federal Constitution. Again rejecting such contention, this Court said at page 197:

> "It must appear that the State, by consent or cession, has transferred to the United States that residuum of jurisdiction which otherwise it would be free to exercise."

Citing:

> *Surpless Trading* v. *Cooke*, 281 U. S. 647;
> *James* v. *Dravo*, 302 U. S. 134;
> *Ft. Leavenworth Ry Co.* v. *Lowe*, 114 U. S. 525;
> *Arlington* v. *Fant*, 278 U. S. 439;
> *United States* v. *Unzuetta*, 281 U. S. 138.

In the *Atkinson* case, the principles set forth in the *James* case and the *Silas Mason* case were reaffirmed. At page 23 this Court said:

> "In Silas Mason v. Tax Comm. * * * we said that as a transfer of exclusive jurisdiction rests upon a grant

by the State, it follows in accordance with familiar principles applicable to grants, that the grant may be accepted or declined."

In *Collins* v. *Yosemite Park*, 304 U. S. 518, at page 528, Mr. Justice Reed stated:

"Jurisdiction obtained by consent or cession may be qualified by agreement or through offer and acceptance or ratification. It is a matter of arrangement. These arrangements the Courts will recognize and respect."

In *Murray* v. *Joe Gerrick & Co.*, 291 U. S. 315, Mr. Justice Roberts stated for the Court:

"After the effective date of the State's cession the jurisdiction of the Federal Government was exclusive (Ft. Leavenworth Ry Co. v. Lowe, 114 U. S. 525; United States v. Unzuetta, 281 U. S. 138), and laws subsequently enacted by the State were ineffective in the Navy Yard."

The validity of the New York State consent statutes is not questioned by appellant. There can be no doubt, then, from the foregoing principles enunciated by this Court, but that the effective date of the cession of jurisdiction was not until December 26, 1935.

In construing these consent statutes of New York, the United States Attorney General said (1929, 36 Op. Atty. Gen. 86):

"New York Laws 1896, Chapter 391 and New York Laws 1899, Chapter 242 as they have been respectively amended, express the consent of the legislature of the State of New York to the acquisition of land by the United States within their respective limitations."

"The Act of 1899, Chapter 242, should be complied with in the matter of cities not exceeding two acres in extent for post office and other governmental offices in cities and villages as has been done in the past."

The Act of 1899, Chapter 242 (General Municipal Law, Sections 210, 211, 212) is the Act under which the United States filed its "Title Papers" on December 26, 1935.

As early as 1861, the Attorney General said (10 Op. Atty. Gen. 34) that if the United States failed to obtain consent, it tied its own hands just as where a State withholds its consent to a purchase already made.

In 1935, the Attorney General stated the prevailing rule when he said that to transfer exclusive political jurisdiction and dominion contemplated by Article I, Section 8, Clause 17, over land acquired by the Federal Government, the State in which it is situated must either consent to acquisition or legislatively cede such jurisdiction (38 Op. Atty. Gen. 341).

From the foregoing we have therefore the unassailable conclusion that while exclusive jurisdiction was available to the United States by mere compliance with the provisions of the State consent statutes, acceptance thereof was postponed until December 26, 1935 for some reason best known to the Federal Government.

The attitude of the New York State Courts with respect to the meaning and effect of its consent statutes was recently expressed in a local Magistrate's Court and we refer thereto not as authority but rather as a sound application of the rules as laid down by this Honorable Court.

The case is *People* v. *Vendome Service, Inc.*, 12 N. Y. Supp. (2nd) 183, not officially reported. There, as here, although the New York consent statutes were in force and exclusive jurisdiction available to the United States, no application was made therefor by the United States nor was any effort

made to comply with the law's requirements. Mr. Justice Thomas A. Aurelio stated:

> "This not having been done, the rule to be applied in such cases is laid down in the leading case on the subject, Ft. Leavenworth Ry Co. v. Lowe, 114 U. S. 525, 5 S. Ct. 995, 29 L. Ed. 264, wherein Mr. Justice Field said 'the consent of the State to the purchase of lands within them for special purposes named, is, however, essential under the Constitution, to the transfer to the general government with the title of political jurisdiction and dominion.' Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor."

While there may be doubt in appellant's mind about the power of the State to impose restrictions upon the manner and extent of jurisdiction being transferred, there is none in ours because that question was resolved with finality by this Court in the recent cases referred to herein, *supra*, and it is now the settled rule that the extent of jurisdiction transferable is governed by the State statutes and not by the United States Constitution, Clause 17, Art. I.

Hence, on the day of this accident, the United States had not obtained jurisdiction and there is therefore no Federal question involved reviewable by this Honorable Court.

In view of these legal principles, appellant's assertion that the General Municipal Law does not apply because of the lack of evidence that not more than two acres were involved, would leave the United States in the sorry position that it never obtained jurisdiction under either Act since it never complied with the State Law and its attempted compliance with the General Municipal Law became ineffec-

tual because jurisdiction thereunder was transferable when only two acres within a City were involved.

We, however, take the reasonable view, supported by the stipulation and the presumption that the Acts of the Federal Government are legal, to wit: that the United States obtained exclusive jurisdiction by complying with the applicable provisions of the General Municipal Law on December 26, 1935.

Even though, as we have shown, the provisions of the State Law were inapplicable, we would like to correct appellant's interpretation thereof. The Act does not give the Governor discretionary power to nullify the consent granted by Section 50, as appellant would have us believe. The consent provided for therein is absolute and complete. With respect to the transfer of jurisdiction, however, under Section 52, the Governor is authorized, if he deems it proper, to execute "a deed or release of the State, ceding to the United States the jurisdiction" over said land. Only to that extent is the Governor clothed with discretion and he is not as appellant contends, with power to "nullify" the consent under Section 50.

Appellant advances the contention that since U. S. Code, Title 40, Section 255, prohibits the expenditure of any public money until State consent is procured, acceptance of jurisdiction must be presumed by the expenditure in the instant case.

But appellant forgets that consent was complete (General Municipal Law, Section 210, or State Law, Section 50) and exclusive jurisdiction available. That the United States delayed its acceptance of exclusive jurisdiction until December 26, 1935, is no concern of appellant's and it is reasonable to say that the Federal Government had a definite reason therefor and we cannot presume that the acts of the Government were illegal.

The United States, therefore, did not obtain jurisdiction over this building until after the date of the accident and this Court is without jurisdiction to hear this appeal.

Appellee next asserts as ground for dismissal that the decision of the State Court rests upon non-Federal ground which independently and adequately supports the judgment of the trial Court not withstanding the certification of a Federal question by the State Court of Appeals.

In *Southwestern Bell Tel. Co. v. State of Oklahoma* (1938), 303 U. S. 206, 82 L. Ed. 751, 58 Sup. Ct. 528, in dismissing an appeal from the State of Oklahoma, this Court stated that it had no jurisdiction to review a State Court decision unless it appeared affirmatively from the record that not only was a Federal question presented for decision to the highest Court of the State having jurisdiction, but that its decision of the Federal question was necessary to the determination of the cause; that the Federal question was actually decided or that judgment as rendered could not have been given without deciding it.

In *Honeyman v. Hanan* (N. Y. 1937), 300 U. S. 14, 57 S. Ct. 350, 81 L. Ed. 476, it was said:

> "A certificate or statement by a State Court that a Federal question has been presented to it and necessarily passed upon is not controlling and cannot avail to foreclose inquiry which the United States Supreme Court must make in deciding whether it has jurisdiction or to impart in the record a Federal question which otherwise is not thereby presented." (Appeal dismissed, 302 U. S. 375.)

Does this record meet those requirements? Appellee thinks not and asserts that no Federal question of substance is presented.

The learned trial Justice held:

"The proximate cause of the accident which occasioned decedent's death was the failure of the defendant to thoroughly plank over the beams as required by Section 241, Subdivision 4, of the Labor Law."

The only possible Federal question which could properly have been before the Court was, as stated by appellant (R. 99), that the Labor Law was inapplicable as four years before jurisdiction had been ceded by New York State to the Federal Government.

The decision of the trial Justice does not purport to decide a Federal question.

Obviously, if the United States had not accepted exclusive jurisdiction up to October 24, 1935, no Federal question was involved and the denial of appellant's motion to dismiss in the trial Court supports the conclusion that the judgment rests on adequate, independent, non-Federal ground.

Ward v. *Board of Co. Comm.*, 253 U. S. 17;
Live Oak Water Users Ass'n v. *R. R. Comm. of Cal.*, 296 U. S. 354;
Fox Film Corp. v. *Muller*, 296 U. S. 207;
City of New York v. *Central Savings Bank*, 306 U. S. 661.

Appellant says that the affirmance by the Appellate Division was on the theory that the property in question had become a Federal reservation and appellee concedes that there is some basis for the conclusion from their language that "the common law and statutes in effect before the act of cession remain in force until displaced by Congress (*Kaufman* v. *Hopper*, 220 N. Y. 184, 187, 115 N. E. 470, and cases cited therein). There has been no action by Congress displacing the Labor Law in respect of this Federal reservation. Such Federal action as has taken place

is confirmatory of plaintiff's right to invoke the applicable State statutes. (45 Stat. 54, Title 16, U. S. Code, Section 457.)" (Dec. Ap. Div. R. 131.)

But neither the certification by the Court of Appeals nor the decision of an intermediate appellate court is competent to originate a Federal question which does not appear in the record.

> *Purcell* v. *New York Central R. R.*, 296 U. S. 545;
> *Alexander* v. *Morietonews*, 301 U. S. 702;
> *Honeyman* v. *Hanan*, 300 U. S. 14.

However, assuming for this discussion, as appellant contends, that exclusive jurisdiction had vested in the United States, would there then be a Federal question of substance involved?

POINT II.

Even if it be assumed that jurisdiction was effectively transferred to the United States prior to the date of the accident, the Labor Law nevertheless continued in force since it was not repugnant to Article I, Section 8, of the Federal Constitution, and therefore, no Federal question of substance is involved.

This point is addressed to appellant's argument labeled "C", page 12 of its brief, and it becomes necessary to consider same only if appellee's motion to dismiss is denied.

Appellant concedes that laws which regulate the personal and property rights of the individual, termed "municipal" continue in effect after change of sovereigns.

In *Chicago, Rock Is. & Pac. R.* v. *McGlinn*, 114 U. S. 542, page 546, Mr. Justice Field stated this rule as follows:

> "It is a general rule of public law recognized and acted upon by the United States that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal law of the country, i.e., the laws which were enacted for the protection of private rights, continue in force until abrogated by the new sovereign."

The New York Labor Law enacted for the benefit of workingmen is clearly within this rule.

Steele v. *Halligan*, 229 Fed. 1011 (Wash.).

The New York State Labor Law was before the late Mr. Justice Cardozo when he said in *Kaufman* v. *Hopper*, 220 N. Y. 184, 187, in an analogous case:

"The common law and statutes passed before the act of cession remain in force in the ceded territory until displaced by Congress, (McCarthy v. Packard Co., 105 App. Div. 436, aff'd, on opinion below, 182 N. Y. 555; Barrett v. Palmer, 135 N. Y. 336) but later statutes are of no effect. This is now the settled rule (Farley v. Scherno, 208 N. Y. 269; Ft. Leavenworth Ry. Co. v. Lowe, 114 U. S. 525, 537; W. U. Tel. Co. v. Chiles, 214 U. S. 274)".

In the *Kaufman* case, it appears that the Labor Law was enacted after jurisdiction had been effectively ceded by the State to the United States. It was for that reason that the law was held inapplicable. Had the Act of February 1, 1928 (45 Stat. 54) been in force at the time, the Labor Law would have been held applicable by "adoption".

Barrett v. *Palmer* was affirmed by this Court in *Palmer* v. *Barrett*, 162 U. S. 399. The following cases have reaffirmed this rule.

Murray v. *Joe Gerrick & Co.*, 291 U. S. 315;
Arlington v. *Fant*, 278 U. S. 439;
Vilas v. *Manila*, 220 U. S. 345;
Ft. Leavenworth Ry. Co. v. *Lowe*, 114 U. S. 525;
United States v. *Unzuetta*, 281 U. S. 138.

On page 14 of its brief, and quoting from Halleck's International Law (Volume 2, Chapter 34, Section 14, page 516) appellant says "that this rule that laws continue in force applies only to those adopted by the new sovereign as its own." That such contention is without merit can be seen from the language of the very decisions upon which appellant relies.

The rule is that State laws remain in force until abrogated or displaced by the new government. "Congress may,

however, adopt such later state legislation as respects territory under its jurisdiction * * *".

Murray v. *Joe Gerrick & Co.*, 291 U. S. 315, 317, 1935 (38 Op. Atty. Gen. 341).

Since the only point saved by appellant on the record is that the State law while valid was invalidly applied (R. 99 & 112), we limit ourselves to that question.

Unless then, it affirmatively appears that the State Labor Law was inconsistent with the purposes of the acquisition or was repugnant to Article I, Clause 17, Section 8 of the Federal Constitution, there is no question of substance involved.

Both parties rely upon the same authorities. The only reason assigned by appellant for the possible repugnance of the Labor Law is in the assertion that the duty to enforce the law in the Federal reservation would be an interference with Federal authority and that it cannot be reasonably inferred that the Federal Government intended that this statute should be only partially effective in its territory.

It is unnecessary to consider that question because we are concerned solely with the civil aspects of the law and the civil responsibility of one New York citizen to another New York citizen for an admitted violation of the State law by the former, resulting in the death of the latter, and the attempt to escape liability on the sole ground that, because the liability originated upon Federal territory, the State law was inapplicable.

Whether or not the State officers could have entered upon the "reservation" to prevent the wrong by compelling compliance with the Labor Law, is immaterial. The wrong was committed, the decedent met his death as a result thereof and the action at law for wrongful death under the State

Decedent Estates Law, Section 130,* gave to appellee the right to invoke the applicable provisions of the State Labor Law to sustain her right to recover, for the civil wrong.

Appellant may have been willing to gamble upon the assumption that the State could not enter upon Federal property to enforce the provisions of the Labor Law but that in no way detracted from its legal responsibility to those injured because of its failure to comply therewith.

Any other reasoning requires the conclusion that a Federal "enclave" creates a sanctuary for an independent contractor and no matter how deliberate or willful his negligence, he would nevertheless be immune from both the criminal and civil laws of the State.

Fortunately, such is not the law. As to its civil aspects, the Labor Law continued in force since in no way was it repugnant to the Federal Constitution or the purpose of the acquisition.

Chicago, Rock Island & Pa. R. v. *McGlinn*, 114 U. S. 542;
United States v. *Unzuetta*, 281 U. S. 138;
Ryan v. *State*, 302 U. S. 186;
Murray v. *Joe Gerrick & Co.*, 291 U. S. 315;
James v. *Draro*, 302 U. S. 134;
Silas Mason Co. v. *Tax Comm. of Wash.*, 302 U. S. 186;
Vilas v. *Manila*, 220 U. S. 345;
Williams v. *Arlington Hotel*, 22 F. (2nd) 669;
Palmer v. *Barrett*, 162 U. S. 399;
Arlington v. *Fant*, 278 U. S. 439;
Ft. Leavenworth Ry. Co. v. *Lowe*, 114 U. S. 525;
W. U. Tel. Co. v. *Chiles*, 214 U. S. 274.

These rules were restated by the Attorney General (1935, 38 Op. Atty. Gen. 341) when it was said that State laws

* Appendix, p. 37.

regulating private civil rights continued in force where they were consistent with exclusive jurisdiction and not inconsistent with the Federal laws or the purpose of the cession.

The Labor Law is concededly a valid enactment. There has been no Federal legislation to supersede it. No claim is made that its provisions are inconsistent with the purpose of the acquisition.

It follows that even if it be assumed that jurisdiction had been effectively transferred to the United States prior to the date of the accident the Labor Law was nevertheless applicable and no substantial Federal question is involved.

"Such Federal action as has taken place is confirmatory of plaintiff's right to invoke the applicable State statutes (45 Stat. 54, Title 16, U. S. Code, Section 457)". (Decision of the Appellate Division, R. 131.)

The Act of February 1, 1928, to which the learned Court referred, was before this tribunal in *Murray* v. *Joe Gerrick & Co.* (1934), 291 U. S. 315, and there can be no doubt but that the Appellate Division correctly interpreted Section 457, as indicated by this Honorable Court.

The sponsor of this Federal Act was the late Senator Walsh of Montana (Congressional Record, Volume 69, Part 2, page 678) who, in answer to the query of the Senator from Arkansas as to the purpose of the Act (id. 1293) stated it was "intended practically to make the application of what is known as Lord Campbell's Act to places within the exclusive jurisdiction of the United States" so that "if under the law of Arkansas a right of recovery could be had if the death occurred outside of the national park, the same right of action would exist if it occurred in the national park" (id., page 1486).

In *Ralph Sollett & Sons* v. *Comm. of Va.*, 292 U. S. 599, appellant therein, as in the instant case, asserted that a State

statute was improperly applied to property under the exclusive jurisdiction of the United States by virtue of Article I. Section 8, Clause 17. The appeal was dismissed for want of a substantial Federal question and rehearing was denied, April 30th, 1934.

Although the point was not made in the trial Court and is not within the certification of the Court of Appeals, appellant contends, (argument "D") that to enforce the Labor Law would operate to control and restrict the conduct of a Federal project and that therefore it was repugnant in that respect.

Even if that question were properly before the Court, it is an objection that the United States or its agents might make but hardly the appellant, who, as an independent contractor is neither arm, agent or instrumentality of the Federal Government.

In *Baltimore Ship Building & Drydock Co.* v. *Baltimore*, 195 U. S. 375, a contractor engaged in the construction of a Federal project asserted a similar claim as an alleged instrumentality of the Government and that any interference by the State was a violation of its immunity. Such contention was rejected by this Court.

Ralph Sollett & Sons v. *Comm. of Va.* (*supra*) is to the same effect.

In *General Construction Co.* v. *Fischer*, 39 Pa. (2nd) 358, an appeal was also dismissed by this Court for want of a substantial Federal question, 295 U. S. 715. The lower Court had rejected appellant's contention of immunity in the following language:

> "When plaintiff, an independent contractor for gain, entered into a contract to perform labor and furnish materials to the Federal Government, it did not thereby become a part of, or an instrumentality of the United States Government."

In accord are:

Trinity Farms Construction Co. v. Grosjean, 291 U. S. 466;
James v. *Draco*, 302 U. S. 134.

The principle of immunity is generally based upon the direct ownership or use and control of the property by the United States. Such immunity does not extend to a general contractor merely because he has a contract with the United States. As was said in *Fidelity & Deposit Co.* v. *Pa.*, 240 U. S. 319, 60 L. Ed. 664, 36 S. Ct. 298,

> "Mere contracts between private corporations and the United States do not necessarily render the former Government agents or confer freedom from State control."

Thompson v. *Union Pacific Ry.*, 9 Wall. 579;
Metcalf & Eddy v. *Mitchel*, 269 U. S. 514;
Gromer v. *Standard Dredging*, 224 U. S. 362.

In *James* v. *Draco*, it was pointed out that an independent contractor engaged in constructing a Federal project upon Federal property remained nevertheless an independent contractor and did not thereby become an instrumentality of the Government.

Alward v. *Johnson*, 282 U. S. 509.

The reference to the act sponsored by Senator Shepard (appellant's brief, page 18) as evidence of a presumption not to adopt State safety laws on Federal projects is to our minds frivolous. In the first place, the language of the proposed act clearly indicates that its purpose was to adopt the enforcement features of the State safety laws. It is also just as reasonable to say, as long as appellant is presumptu-

ous, that the act failed of enactment because application of the State safety laws could be spelled out from The Act of February 1, 1928 (45 Stat. 54, Title 16, U. S. Code 457).

When it was decided in *Murray* v. *Joe Gerrick & Co.*, 291 U. S. 315, that the compensation act of Washington was not within the purview of the Act of February 1, 1928, since it contemplated "actions at law" and not "a system by which employers contribute to a fund to which injured workmen must look for compensation", Congress voiced its reaction by passing the Act of June 25, 1936 (49 Stat. 938) which not only made State Compensation Laws applicable to Federal projects but gave to the State agencies the power of enforcement.

This act is indicative of the intention of Congress not only to continue the force and effect of the State laws regulating private civil rights, but also to adopt later laws which provide for the welfare and safety of workmen. That a law may be effective to control private civil rights and nevertheless incapable of enforcement is borne out by this act for unless specific enforcement powers were given to State agencies, such enforcement or police power would have remained with the Federal Government.

The *Murray* case held that the compensation act of Washington "was not a right of action" within the Act of February 1, 1928.

New York Labor Law, Section 241, Subdivision 4, creates that "right of action" and we quote from appellant's brief, page 4, in opposition to our motion to dismiss:

> "* * * it has been uniformly held that violation of a statute, which imposes a positive duty for the benefit of a particular class, creates a cause of action in favor of any member of that class who is injured through its violation, regardless of 'negligence'. The duty is created by the statute, regardless of the existence of

> any duty at common law (cases cited). The Labor Law is such a statute. It imposes absolute, non-delegable duties upon those in control of the construction of buildings, for the protection of all persons engaged in the work. Civil liability for injuries or death, resulting from the breach thereof, follows by operation of law" (cases cited).

The New York Decedent Estate Law, Section 130, which gave to appellee a right to hold appellant liable for its admitted negligence, is clearly within the purview of the act of February 1, 1928.

The Labor Law defines the duties owed by a contractor to employees and provides that violation thereof gives rise to a civil action for any injury or death attributable to its violation. Such a law is "municipal" as distinguished from political.

We have pointed out that in *Kaufman* v. *Hopper*, 220 N. Y. 184, the provisions of the New York State Labor Law were before the late Mr. Justice Cardozo. His opinion was based in part upon the decision of Mr. Justice Field in *Chicago, Rock Is. & Pa. R.* v. *McGlinn*, 114 U. S. 542, wherein "municipal laws" were termed as "the laws which are intended for the protection of private rights."

As we stated earlier herein, had the Act of February 1, 1928, *ante*, been in force, it is logical to say that the Labor Law would have been decreed "adopted" as a "municipal law."

In *Bradford Elect. Lt. Co.* v. *Clapper*, 286 U. S. 145, 52 S. Ct. 571, 76 L. Ed. 1026, at pages 157, 158, this Court said:

> "Workmen's Compensation Acts are treated, almost universally, as creating a statutory relation between the parties * * * not, like employers liability acts as substituting a statutory tort for a common law tort."

The Labor Law, likewise substituted a statutory tort for a common law tort but it nevertheless remained as the law intended for the protection of private rights, "the municipal law."

Appellant's strained distinction to avoid a just liability is without substance.

We submit, therefore, that the State statute was in force no matter whether it be decided that the State or the United States had jurisdiction of the enclave at the time and therefore no Federal question of substance is involved.

POINT III.

No Federal question of substance is presented by the contention (assignment #6, R. 143) that the State Court erred in excluding defendant's exhibit "A" for identification.

Without preliminary foundation, the appellant offered into evidence two sections of the specifications of the alleged contract between the Treasury Department and itself.

This was the only evidence offered by it (R. 110) and counsel stated, "And I want to call attention particularly to the things I have in mind, two sections of the specifications which by reference are made part of the contract."

At page 111, folio 332, "It is my claim * * * the United States Government through proper authority has specifically limited and exempted from application and declared a policy that those provisions are not applicable."

Under the guise of "argument D", appellant for the first time asserts that its contract was an instrumentality of the Federal Government and, as applied herein, the Labor Law conflicted and interfered with that contract and its performance.

We contend that no such question is properly before the Court and even if it were it is without merit.

Patterson v. *State of Alabama*, 294 U. S. 600.

In this point we address ourselves to appellant's arguments labeled "D" and "E"; except as already referred to *ante*.

The reason for the exclusion of the proffered evidence by the Court is not stated but appellant concedes the rule of law to be "that a contract may not relieve a party thereto from the performance of a duty to a stranger to it". (Appellant's Brief, p. 20.)

It asserts, however, that the contract was an instrumentality of the United States and also evidence of executive determination that compliance with the statute would burden, hinder and interfere with the performance thereof.

In answer, we contend, that even if this question were properly before the Court, no such intention is apparent from the language of the proffered sections and further that the Treasury Department was without power to grant to appellant immunity from the otherwise applicable provisions of the laws of the State, since that power, legislative in its nature, is expressly reserved to Congress.

The sections excluded, are as follows:

Section 21, Protection of Public and Property (R. 121):

> "The contractor shall * * * comply with all Municipal ordinances which apply to the use of sidewalks and streets or alleys for building operations, but such ordinances do not apply inside of the lot lines. He shall be held responsible for any damage or injury to persons or property which may occur as a result of his fault or negligence in the prosecution of the work."

Section 22. Permits:

> "The contractor shall without additional expense to the Government obtain all required licenses, permits, etc. This applies to work outside the lot lines, the use of streets and sidewalks, the protection of public and traffic, connections to utility service lines, etc. State or Municipal Building Regulations do not apply to work inside the Government's lot lines."

We find nothing contained therein which says in words or substance that appellant was not required to comply with the provisions of the State Labor Law. Section 21, as its title indicates, relates to "protection of public and property" and requires the contractor to provide and maintain all necessary guard rails, etc., for the protection of the public and to comply with sidewalk ordinances in so far as they apply inside of the lot lines. It provides, however, that the contractor "shall be held responsible for any damage or injury to persons or property which may occur as a result of its fault or negligence in the prosecution of the work."

We doubt that it can be said with reason that it was the intention of the Treasury Department by this language to relieve appellant from the necessity of complying with the Labor Law provisions and thereby be free from any responsibility attributable to such noncompliance.

Section 22, as its title indicates, required the contractor to procure permits for work outside the lot lines but not inside. In an advisory manner it says "state or municipal building regulations do not apply to work inside the government lot lines." In our opinion the last sentence refers solely to permit requirements. Appellant claims, however, that this granted complete immunity to it and it was therefore at liberty to disregard any and all State laws provid-

ing for the safety and protection of hundreds of men employed.

Under the Penal Law of New York State, Section 1275, violation of the Labor Law or any rule, regulation or order adopted or made in pursuance of its provisions is a misdemeanor. Enforcement is entrusted to State officers outside of cities but otherwise to local city agencies.

It is true that when a new sovereign becomes the owner of property with exclusive jurisdiction thereof, enforcement or police power immediately passes to it. Substantive rights in existence, however, can only be altered by direct action by that sovereign (Point II).

That there is a definite distinction between substantive and/or civil rights as distinguished from their penal character, appears from U. S. Code, Title 10, Section 290,* enacted June 25, 1936, Chapter 822, Section 1 and 2 (49 Stat. 1938). By this act not only are State compensation laws made applicable to Federal projects, but in addition, the power of enforcement is given to the "agencies of the State". This act was passed about a year after the decision in *Murray v. Joe Gerrick & Co.*, 291 U. S. 315, and removed any question about the applicability of State compensation laws to Federal projects. It also removed the necessity of deciding whether or not State compensation laws were within the purview of the Act of February 1, 1928, Chapter 15 (Title 16, U. S. Code, Section 457).

It is therefore apparent that Congress recognized that while State laws might continue in force even after the United States accepted jurisdiction, still, unless the agencies of the State were given the power to enforce them, that right remained with the United States. Until similar action is taken with respect to other State laws, to wit: The Labor

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* (Appendix, p. 38.)

Law, its civil aspect governing the private rights of citizens continues in force in Federal enclaves but the enforcement thereof remains in the hands of the Federal Government.

We doubt that appellant would contend that the Treasury Department by contract could remove the application of State compensation laws in view of U. S. Code, Title 40, Section 290.* For the same reason the Treasury Department could not and in fact did not attempt to remove the effectiveness of the Act of February 1, 1928.

Even if it be assumed that the Treasury Department intended to do so, it was without power to accomplish that result. Under the United States Constitution, Article I, Section 8, Clauses 17, 18, only Congress is vested with power to enact laws or to repeal them. The powers conferred upon executive heads of executive departments are administrative, not legislative.

United States v. *George*, 228 U. S. 415.

Regulations by an executive must be consistent with law. They may not be extended so as to alter, amend and defeat a law already enacted by Congress. Where rights, duties and obligations are defined by statute they cannot be taken away or abrogated by the act of an executive department.

Campbell v. *United States*, 107 U. S. 407;
Morrell v. *Jones*, 166 U. S. 466.

The legislative power vested in Congress cannot be abrogated or assigned.

Panama Refining Co. v. *Ryan*, 293 U. S. 388; 55 S. Ct. 241;
Curran v. *Wallace*, 306 U. S. 1; 59 S. Ct. 379.

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* (Appendix, p. 38.)

The Treasury Department was without authority to grant immunity to appellant even if it intended to do so.

Panama Refining Co. v. *Ryan* (*supra*).

And this is particularly true when the contract or regulations are in conflict with the express statutory provisions.

Maryland Cas. Co. v. *U. S.*, 251 U. S. 342.

We have been unable to find any Congressional enactment which expressly or impliedly gives to the Treasury Department the authority to remove the effect of applicable State laws or United States laws.

To the contrary we find the Act of February 1, 1928 (Title 16, U. S. Code, Section 457) confirming appellee's right to recover and the later Act of June 25, 1936 (49 Stat. 1938), both evincing an intention upon the part of the Federal Government to permit the States to apply State laws dealing with purely local matters even though the enclave happens to be under the "exclusive jurisdiction" of the United States.

Although appellant advances that argument, it seems incredible that the Treasury Department would attempt by contract to remove application of the State Labor Law which gives rise to an "action at law" at the effective date of the cession which was clearly within the contemplation of the Act of February 1, 1928.

It has always been the practice of the Federal Government to provide for the safety of workmen engaged in the construction of Federal buildings even though general contractors are acting independently.

While the contract between appellant and the Treasury Department is not in evidence, the inference is that it required appellant to provide compensation insurance for the

protection of its own employees and liability insurance for the protection of the employees of others because those very conditions were exacted by appellant of the United Hoisting Co., Inc. in its subcontract which is in evidence (R. 118, plaintiff's Exhibit "3", R. 119, 120).

Merely asserting that the State Labor Law did not apply is legally insufficient unless it is shown that some contrary Federal rule was controlling.

It is difficult to believe that appellant seriously contends that it was free from any and all responsibility to the employees of subcontractors regardless of the extent of its negligence in providing for their safety.

Yet, as strange as it seems, that is exactly the position it takes. It says, we admit that we failed to protect the "bay" where Sadrakula was working and it is true that we have been found negligent in that respect and responsible for his death, but nevertheless, the State Labor Law was inapplicable. In other words, its position is that the "reservation" was without any laws.

To prevent such a situation the rule in *Chicago, Rock Is. & Pa. Ry* v *McGlinn*, 114 U. S. 542, 546, was laid down. Therein it was decided that in order to escape the impossible conclusion that no law existed to determine the rights and duties of the inhabitants of those areas, the Courts borrowed the international rule (*Vilas* v. *Manila*, 220 U. S. 345) that upon a cession of jurisdiction the laws of the old sovereignity remain in force until abrogated by the new, unless "in conflict with the political character, institutions, and constitution of the new government."

We are thus brought back to our contention in Point II that no matter how appellant may view it in a different light, the only law which could properly have been held applicable was the New York State Labor Law and since that was the State Law in force at the time, no action of the Treasury

Department even if so intended could have removed its effectiveness.

The case of *Anderson* v. *Chicago & N. W. R. R. Co.* (162 Neb. 578, 168 N. W. 196), cited by appellant (brief, p. 12), supports our contention.

In the *Anderson* case, land was ceded to the United States for the purpose of a Military reservation. The railroad company had a right of way running directly through the center and at the time of cession, there was a State Law in existence requiring such right of way to be fenced in. The railroad company attempted to comply with the State law but was prevented from so doing by the Commanding Officer because the fence would divide the "reservation" into two equal parts and greatly restrict the use of the property for the purpose of the acquisition.

It was very properly decided that as the State law was inconsistent with the very purpose of the acquisition, it ceased to exist in the reservation. It was not the action of the Secretary of War that removed the effect of the State Law, but rather the general rule of law (*Chicago Rock Is. & Pa. R.* v. *McGlinn*, *supra*) that the laws continue upon the reservation "where not inconsistent with the purpose of the cession."

We believe that in our Point "II" we have sufficiently refuted appellant's argument "D".

We would nevertheless like to submit what was said by this Court in *Trinity Farms Construction Co.* v. *Grosjean*, 291 U. S. 466, 78 L. Ed. 919.

> "Appellant is an independent contractor. Casement v. Brown, 148 U. S. 615, 622, 13 S. Ct. 672, 37 L. Ed. 582, 585. It is not a government instrumentality. Cf. Metcalf v. Mitchell, 269 U. S. 514, 70 L. Ed. 384, 46 S. Ct. 172;

Group No. 1 Oil Corp. v. Bass, 283 U. S. 279, 75 L. Ed. 1032; 41 S. Ct. 432."

"If the payment of State taxes imposed on the property and operations of appellant affects the Federal Government at all, it at most gives rise to a burden which is consequential and remote and not to one that is necessary, immediate or direct (cases cited). Appellant's claim of immunity is without foundation."

In the same manner, appellant's contention that if the State sought to enforce the Labor Law in the "enclave", it then would be an interference with a Federal instrumentality, is also without foundation.

CONCLUSION.

It is respectfully submitted that appellee's motion to dismiss or affirm should be granted because:

(a) This Court is without jurisdiction to hear the appeal (Point I)

(b) The decision of the State Court rests upon independent non-Federal ground adequate to support it

(c) No Federal question of substance is involved.

Respectfully submitted,

LEO FIXLER

APPENDIX.

§290. State workmen's compensation laws; extension to buildings and works of United States

Whatsoever constituted authority of each of the several States is charged with the enforcement of and requiring compliances with the State workmen's compensation laws of said States and with enforcement of and requiring compliance with the orders, decisions, and awards of said constituted authority of said States shall have the power and authority to apply such laws to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of any State, and to all projects, buildings, constructions, improvements, and property belonging to the United States of America, which is within the exterior boundaries of any State, in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the State within whose exterior boundaries such place may be.

For the purposes set out in this section, the United States of America hereby vests in the several States within whose exterior boundaries such place may be, insofar as the enforcement of State workmen's compensation laws are affected, the right, power, and authority aforesaid: Provided, however, That by the passage of this section the United States of America in nowise relinquishes its jurisdiction for any purpose over the property named, with the exception of extending to the several States within whose exterior boundaries such place may be only the powers above enumerated relating to the enforcement of their State workmen's compensation laws as herein designated: Provided further, That nothing

in this section shall be construed to modify or amend sections 751 to 796 of Title 5. (June 25, 1936, c. 822, §§1, 2, 49 Stat. 1938, 1939.)

New York "Death" Act (Decedent Estate Law, Sec. 130; Consolidated Laws of New York, Chap. 13, Sec. 130).

"Sec. 130. Action by executor or administrator for negligence or wrongful act or default causing death of decedent.

The executor or administrator duly appointed in this state, or in any other state, territory or district of the United States, or in any foreign country, of a decedent who has left him or her surviving a husband, wife, or next of kin, may maintain an action to recover damages for a wrongful act, neglect or default, by which the decedent's death was caused, against a natural person who, or a corporation which, would have been liable to an action in favor of the decedent by reason thereof if death had not ensued. Such an action must be commenced within two years after the decedent's death. * * *." (Remainder thereof not pertinent.)

Act of Feb. 1, 1928, 45 Stat. 54 (Tit. 16, U. S. C. A., Sect. 457).

Section 457. ACTION FOR DEATH OR PERSONAL INJURY WITHIN NATIONAL PARK OR OTHER PLACE UNDER JURISDICTION OF UNITED STATES; APPLICATION OF STATE LAWS. In the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any State, such right of action shall exist as though the place were under the jurisdiction of the State within whose exterior boundaries such place may be; and in any action brought to recover on account of injuries sustained in any such place the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which it may be. (Feb. 1, 1928, c. 15, 45 Stat. 54.)

P. 2.

SUPREME COURT OF THE UNITED STATES.

No. 251.—October Term, 1939.

James Stewart & Co., Inc., Appellant,
vs.
Katherine Sadrakula, as Administratrix, etc. of Nicholas Sadrakula, deceased.

Appeal from the Supreme Court of the State of New York.

[January 29, 1940.]

Mr. Justice Reed delivered the opinion of the Court.

This is an appeal from a final judgment of the Supreme Court of New York awarding damages for accidental death. As a statute of the state necessarily was sustained against a contention that its application to these circumstances violated the provisions of the Constitution as to the exclusive authority of the United States over a post-office site purchased with the consent of New York,[1] this Court has jurisdiction under Section 237(a) of the Judicial Code and the Act of January 31, 1928.

The issue of law involved is whether an existing provision of a state statute requiring the protection of places of work in the manner specified in the statute[2] remains effective as a statute of the United States applicable to the particular parcel after the federal government acquires exclusive jurisdiction of a parcel of realty on which work is being done.

The decedent, an employee of a rigging company, a sub-contractor engaged in the construction of the New York post office, fell from an unplanked tier of steel beams down a bay and was killed. In an action of tort against the general contractor, his administra-

[1] Constitution, Art. I, Sec. 8, Cl. 17:

"The Congress shall have Power . . . To exercise exclusive Legislation . . . over all Places purchased by the consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; . . . ."

[2] New York Labor Law § 241 reads as follows:

"Sec. 241. Protection of Employees on Building Construction or Demolition Work. All contractors and owners, when constructing or demolishing buildings, shall comply with the following requirements:

trix narrowed the scope of the charges of negligence until violation of the quoted sub-section of the Labor Law only was alleged. The trial court found that the proximate cause of the accident was the negligent failure to plank the beams as required by the statute. The Appellate Division affirmed[3] on the ground that the Labor Law provision continued effective over the post-office site after the transfer of sovereignty, and the Court of Appeals by an unreported order of remittitur also affirmed on the same ground with a statement that in its affirmance it necessarily passed upon the validity and applicability of Section 241(4) of the Labor Law under Article I, Section 8 of the Constitution.

The language of the Court of Appeals and the record show indubitably that a determinative federal question was decided.[4] The conclusion as to the continued vitality of existing state statutory regulations in the protection of workmen in ceded federal areas makes it substantial.[5] The motions to dismiss or affirm the appeal are denied.[6]

If the quoted provision of the Labor Law is operative even though exclusive jurisdiction had already vested in the United States, it is unnecessary to determine whether exclusive jurisdiction had actually passed to the United States. The state courts assumed that federal sovereignty was complete through consent by the state and we make the same assumption. Does the acceptance of sovereignty by the United States have the effect of displacing this sub-section of the New York Labor Law? We think it did not. The sub-section continues as a part of the laws of the federal territory.

It is now settled that the jurisdiction acquired from a state by the United States whether by consent to the purchase or by cession

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"4. If the floor beams are of iron or steel, the entire tier of iron or steel beams on which the structural iron or steel work is being erected shall be thoroughly planked over to not less than six feet beyond such beams, except spaces reasonably required for proper construction of the iron or steel work, for hoisting or lowering of material or for stairways and elevator shafts designated by the plans and specifications."

[3] 254 App. Div. 892.

[4] Honeyman v. Hanan, 300 U. S. 14, 19; Whitfield v. Ohio, 297 U. S. 431, 435; cf. McGoldrick v. Gulf Oil Corp., No. 473, October Term, 1939, decided January 15, 1940.

[5] Milheim v. Moffat Tunnel Dist., 262 U. S. 710, 716.

[6] Cf. Mason Co. v. Tax Commission, 302 U. S. 186, 197; Murray v. Gerrick & Co., 291 U. S. 315-16.

may be qualified in accordance with agreements reached by the respective governments.[7] The Constitution does not command that every vestige of the laws of the former sovereignty must vanish. On the contrary its language has long been interpreted so as to permit the continuance until abrogated of those rules existing at the time of the surrender of sovereignty which govern the rights of the occupants of the territory transferred.[8] This assures that no area however small will be left without a developed legal system for private rights. In *Chicago, Rock Island and Pacific Railroad* v. *McGlinn, supra,* a Kansas statute relating to recovery against a railroad for the injury to livestock on its right of way existed at the time of the cession to the United States of exclusive jurisdiction over Fort Leavenworth Military Reservation. It was held that the statute was carried over into the law covering the Reservation. Conversely, in *Arlington Hotel Company* v. *Fant, supra,* an Arkansas statute relieving innkeepers, passed after cession of Hot Springs Reservation, was held unavailing as a defense to a Reservation innkeeper's common-law liability in accordance with Arkansas law before the cession. Such holdings assimilate the laws of the federal territory, where the Congress has not legislated otherwise, to the laws of the surrounding state.

The Congress has recognized in certain instances the desirability of such similarity between the municipal laws of the state and those of the federal parcel. Since only the law in effect at the time of the transfer of jurisdiction continues in force, future statutes of the state are not a part of the body of laws in the ceded area. Congressional action is necessary to keep it current. Consequently as defects become apparent legislation is enacted covering certain phases. This occurred as to rights of action for accidental death by negligence or wrongful act.[9] After this statute was held inapplicable to claims under state workmen's compensation acts further legislation undertook to extend the provisions of those acts to the places under federal sovereignty.[10] With growing

[7] Collins v. Yosemite Park Co., 304 U. S. 518, 529-30; James v. Dravo Contracting Co., 302 U. S. 134, 147-49.

[8] Murray v. Gerrick & Co., 291 U. S. 315, 318; Arlington Hotel Co. v. Fant, 278 U. S. 439, 445, 446, 454; Chicago, R. I. & Pac. R. R. v. McGlinn, 114 U. S. 542, 546-47.

[9] 45 Stat. 54, 16 U. S. C. § 457 (1928); see Murray v. Gerrick & Co., 291 U. S. 315, 319; H. R. Rep. No. 369, 70th Cong., 1st Sess.; 69 Cong. Rec. 1486.

[10] 49 Stat. 1938, 40 U. S. C. § 290 (1936); see H. R. Rep. No. 2656, 74th Cong., 2d Sess.

frequency the federal government leaves largely unimpaired the civil and criminal authority of the state over national reservations or properties.[11] While exclusive federal jurisdiction attaches, state courts are without power to punish for crimes committed on federal property.[12] This has made necessary the legislation which gives federal courts jurisdiction over these crimes.[13] The tendency toward a uniformity between the federal and surrounding state territory has caused a series of congressional acts adopting the state criminal laws.[14] Through these concessions our dual system of government works cooperatively towards harmonious adjustment.

It is urged that the provisions of the Labor Law contain numerous administrative and other provisions which cannot be relevant to the federal territory. The Labor Law does have a number of articles.[15] Obviously much of their language is directed at situations that cannot arise in the territory. With the domestication in the excised area of the entire applicable body of state municipal law much of the state law must necessarily be inappropriate. Some sections authorize quasi-judicial proceedings or administrative action and may well have no validity in the federal area. It is not a question here of the exercise of state administrative authority in federal territory.[16] We do not agree, however, that because the Labor Law

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[11] 30 Stat. 668 (1898) (jurisdiction receded to states over places purchased for branches of soldiers' homes); 49 Stat. 668, 16 U. S. C. § 465 (1935) (waiver of federal jurisdiction for historic sites); 49 Stat. 2025, 40 U. S. C. § 421 (1936) (same for slum-clearance and low-cost housing projects); 49 Stat. 2035 (1936) (same for resettlement and rural rehabilitation); 50 Stat. 888, § 13(b), 42 U. S. C. § 1413(b) (1937) (same for acquisitions of U. S. Housing Authority).

[12] Bowen v. Johnston, 306 U. S. 19, 29; United States v. Unzeuta, 281 U. S. 138; United States v. Cornell, Fed. Cas. No. 14,867; Commonwealth v. Clary, 8 Mass. 72; People v. Hillman, 246 N. Y. 467.

[13] Judicial Code §§ 24, 27.

[14] R. S. 5391; 30 Stat. 717 (1898); 35 Stat. 1145 (1909); 48 Stat. 152 (1933); 49 Stat. 394 (1935).

[15] Article (1) Short title; definitions; (2) The department of labor; (3) Review by industrial board and court; (4) Employment of children and females; (5) Hours of labor; (6) Payment of wages; (7) General provisions; (8) Public work; (8-a) Grade crossing elimination work; hours and wages; (9) Immigrant lodging houses; (10) Building construction, demolition and repair work; (11) Factories; (12) Bakeries and manufacture of food products; (13) Manufacture in tenement houses; (14) Mercantile and other establishments; (15) Mines and tunnels; quarries; compressed air; (16) Explosives; (17) Public safety; (18) Miscellaneous provisions; laws repealed; when to take effect.

[16] We do not therefore need to consider the authority of the state administrative officers. New York Labor Law § 242. Cf. Oklahoma City v. Sanders, 94 F. (2d) 323 (C. C. A. 10). In this case an injunction was obtained in the

is not applicable as a whole, it follows that none of its sections are. We have held in *Collins* v. *Yosemite Park Company*[17] that the sections of a California statute which levied excises on sales of liquor in Yosemite National Park were enforceable in the Park, while sections of the same statute providing regulation of the Park liquor traffic through licenses were unenforceable.[18]

But the authority of state laws or their administration may not interfere with the carrying out of a national purpose.[19] Where enforcement of the state law would handicap efforts to carry out the plans of the United States, the state enactment must, of course, give way.[20]

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federal district court enjoining a city and certain of its officers from enforcing ordinances relating to licenses, bonds and inspections by daily arrests on account of violations of these ordinances by a contractor doing construction work on a low-cost housing project. The decree was affirmed by the circuit court of appeals after consideration of the Act of June 29, 1936 which reads that "The acquisition by the United States of any real property . . . in connection with any low-cost housing . . . project . . . shall not be held to deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property . . . ." Except as affected by the act just quoted in part, the area was federal territory through a consent statute. The Court, speaking of the recession, said:

"It was not the purpose that the state should have the right to exert police power there through application of municipal ordinances relating to licenses, bonds, and inspections in the course of construction thereon of buildings by the United States government, no such legislative intent or desire being indicated by the act."

It also quoted with approval an excerpt from an opinion of the Director, Legal Division, Federal Emergency Administration of Public Works:

"I am, therefore, of the opinion that the state or local government may not supervise the work of a contractor performing work on property owned by the United States of a contract with the United States."

[17] 304 U. S. 518, 532.

[18] We do not overlook the language in Murray v. Gerrick & Co., 291 U. S. 315, 319, called to our attention by appellant:

"If it were held that beneficiaries may sue, pursuant to the compensation law, we should have the incongruous situation that this law is in part effective and in part ineffective within the area under the jurisdiction of the federal government."

That quotation had reference to a contention that the dependents of an employee, killed on federal territory within a state, might claim compensation as beneficiaries under a state compensation act. The compensation fund, collected and administered by state officers, was not effective in federal territory. Cf. Atkinson v. Tax Commission, 303 U. S. 20, 25. As the fund was not augmented by assessments against the federal contractor, the Court held the procedural provisions of the state compensation act did not apply.

[19] Pittman v. Home Owners' Corp., 308 U. S. 21; Atkinson v. Tax Commission, 303 U. S. 20, 23; James v. Dravo Contracting Co., 302 U. S. 134, 147, 161; United States v. Unzeuta, 281 U. S. 138, 142; Ohio v. Thomas, 173 U. S. 276, 283; Fort Leavenworth v. Lowe, 114 U. S. 525, 531; Kohl v. United States, 91 U. S. 367, 371-72; Thomson v. Pacific R. R., 9 Wall. 579, 591.

[20] Anderson v. Chicago & N. W. Ry., 102 Neb. 578, as commented upon in United States v. Unzeuta, 281 U. S. 138, 144.

May it be said that the continued application of Section 241(4) of the Labor Law[21] will interfere with the construction of the building upon this site? This is like other squares in the city. There are, of course, differentiations because of its ownership, but ownership as such has nothing to do with the safety requirements. It is true that it is possible that the safety requirement of boarding over the steel tiers may slightly increase the cost of construction to the government, but such an increase is not significant in the determination of the applicability of the New York statute. In answer to the argument that a similar increased cost from taxation would "make it difficult or impossible" for the government to obtain the service it needs, we said in *James* v. *Dravo Contracting Company*[22] that such a contention "ignores the power of Congress to protect the performance of the functions of the National Government and to prevent interference therewith through any attempted state action." Such a safety requirement is akin to the safety provisions of Maryland law which in *Baltimore & Annapolis Railroad* v. *Lichtenberg*[23] were held applicable to trucks of an independent contractor transporting government employees under a contract with the United States.

Finally the point is made that a provision requiring boarding over of open steel tiers is a direct interference with the government. This is said to follow from the fact that the contract for the construction of the post office is an instrumentality of the federal government. As a corollary to this argument, error is assigned to the refusal of the trial court to admit in evidence a clause of the contract between the United States and the appellant reading, "State or Municipal Building Regulations do not apply to work inside the Government's lot lines."[24] While, of course, in a sense the contract is the means by which the United States secures the construction of its post office, certainly the contractor in this independent operation

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[21] Note 2, *supra.*

[22] 302 U. S. 134, 160, 161.

[23] 4 A. (2d) 734 (Md.), appeal dismissed for want of a substantial federal question, *sub nom* United States v. Baltimore & Annapolis R. R., No. 78, October Term, 1939, decided December 18, 1939.

[24] The entire section reads:

"22. Permits. The contractor shall without additional expense to the Government obtain all required licenses, permits, etc. This applies to work outside the lot lines, the use of streets and sidewalks, the protection of public and traffic, connections to utility service lines, etc. State or Municipal Building Regulations do not apply to work inside the Government's lot lines."

does not share any governmental immunity.[25] Nor do we think there was error in refusing to admit the clause of the contract as to building regulations. The quoted sentence is in a section of the contract relating to "licenses, permits, etc." We are of the opinion that it is intended to relieve the contractor from provisions as to types of material, fire hazards and the like, which are covered by the New York City Building Code.

Such a safety regulation as Section 241(4) of the New York Labor Law provides is effective in the federal area, until such time as the Congress may otherwise provide.[26]

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[25] James *v.* Dravo Contracting Co., 302 U. S. 134, 152; Helvering *v.* Producers Corp., 303 U. S. 376, 385.

[26] 68 Opinions of the Attorney General 341, 348, 349, is not to the contrary. It declared that Section 2 of a Nevada consent statute was clearly incompatible with exclusive jurisdiction. The section read:

"In the erection of such federal building by contract or otherwise, or in case of any subsequent reconstruction or alteration of such building, it is hereby reserved and provided that the state labor laws, the state labor safety laws and the state health laws, shall apply to all persons, firms, associations or corporations having contracts for such construction or reconstruction as to all provisions contained therein, and no contractor having any such contract shall have the right to claim to be or to declare himself to be a government instrumentality."

The opinion however further stated:

"It is to be observed that there is nothing in what has been said concerning Sections 2 and 3 of the Nevada Statute inconsistent with the doctrine that state laws regulating private civil rights (as distinguished from state criminal laws . . .) continue in force, as laws of the United States, on lands ceded by consent of the state to the United States, if not in conflict with the laws of the new sovereignty or the purpose for which the land is acquired, until superseded by laws enacted by the United States. . . . The difficulty with Sections 2 and 3 of the Nevada Act is that they do not merely occupy a vacant field until filled by the Federal Government—they withhold and reserve jurisdiction, present and future, over the matters specified in them, howsoever inconsistent with existing or future laws of the United States. That precludes exclusive jurisdiction from vesting in the United States."